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Held at the Palais des Nations, Geneva,
on Monday, 4 November 1996, at 10 a.m.

Chairman: Mr. BÁN

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In the absence of Mr. Aguilar Urbina, Mr. Bán, Vice-Chairman, took the Chair

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Germany (HRI/CORE/1/Add.75, English only; CCPR/C/84/Add.5, English only; CCPR/C/58/A/GER; CCPR/C/58/L/GER/3)

1. At the invitation of the Chairman, Mr. Eberle, Mrs. Voelskow-Thies, Mr. Haberland, Mr. Weckerling, Mrs. Fey, Mr. Schaefer and Mr. Hellbach (Germany) took places at the Committee table.

2. The CHAIRMAN welcomed the German delegation and invited its head to introduce his country's fourth periodic report (CCPR/C/84/Add.5). In conformity with usual practice, the German delegation would subsequently reply directly to the questions asked in part I of the list of issues (CCPR/C/58/L/GER/3).

3. Mr. EBERLE (Germany), introducing the fourth periodic report of Germany, pointed out that since the previous report (CCPR/C/52/Add.3) had been presented, Germany had experienced radical changes on account of the unification, in October 1990, of the former German Democratic Republic and the Federal Republic of Germany. Unification had been extremely beneficial for the German people, but it had also forced it to take up a number of new challenges. Some of the assessments made in 1990-1991 had proved to be too optimistic or even erroneous. Where the protection of human rights was concerned, the Germans living in what were known as the "new Länder" had acquired the same rights and freedoms as those already enjoyed by their compatriots in the Federal Republic of Germany. The international commitments to which the former German Democratic Republic had formally subscribed had become reality. On the other hand, there was no denying that the long years under an authoritarian regime had deeply marked the public and private life of those Länder. The Federal Government and society at large were striving to overcome those difficulties. In some cases, extremely delicate decisions were required, and the authorities were far from having satisfactorily resolved all the problems. Clearly, in many respects unification was a far longer process than had been imagined.

4. He then expressed his Government's deep appreciation for the activities of the Human Rights Committee, and assured it of the full cooperation of his country's authorities. He said that the German Government had always defended the principle of the universality and indivisibility of human rights. The credibility of States had become more important than ever. It depended above all on the success achieved in protecting human rights and on the readiness of the authorities to accept international control. No country in the world was exempt from human rights problems. For their part, the German authorities were aware of their weaknesses and shortcomings, but they were committed towards their own citizens and under the Constitution, properly to implement the international instruments to which Germany was a party. He underscored the importance of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of its implementing machinery, which imposed on

Germany commitments that went beyond those of the Covenant or of other major conventions. In addition, the ratification of the Optional Protocol to the Covenant, which had come into force for Germany on 25 November 1993, clearly illustrated the German authorities' willingness to accept the international human rights monitoring machinery. He concluded by emphasizing the importance the German Government attached to its obligations under the Covenant, and in particular the obligation to prepare periodic reports, and its interest in constructive criticism by bodies such as the Committee, which should make it possible - within a framework of dialogue and cooperation - further to improve human rights protection in Germany.

5. Mrs. VOELSKOW-THIES (Germany) said that she would like to make a few introductory remarks as a partial reply to the questions in part I of the list of issues (CCPR/C/58/L/GER/3). First of all, she noted that six years had passed since the third periodic report (CCPR/C/52/Add.3) had been considered and that during the interim period State unification had been accomplished. The process had set radical developments in motion and given rise to manifold problems, which were largely responsible for the unfortunate delay in the submission of the fourth report (CCPR/C/84/Add.5). Since the third periodic report had been considered on 3 October 1990 the Constitution of the Federal Republic of Germany had become applicable in the former German Democratic Republic and federal law securing respect for the fundamental rights set out in the Covenant had been extended to the new Länder as well as to East Berlin. In addition, the Federal Constitutional Court also exercised jurisdiction over complaints lodged by people in the new Länder, including those concerning the provisions of the Unification Treaty. Under the treaty, the protection for human rights afforded by the Covenant had been extended to the whole of Germany. Generally speaking, the field of application of all major acts had been extended to the new territory of the State. The federal authorities and those of the Länder had worked together to create conditions to permit the judicial and administrative system of the new Länder to operate in conformity with the principle of the rule of law. The task had been arduous: there had been a shortage of judges, lawyers, notaries, criminal police officers, etc., to apply the new legislation. Strenuous efforts and goodwill on the part of all those involved had been needed to translate the intentions behind the Unification Treaty into reality. The basic conditions for the protection of human rights and respect for the rule of law had become part of everyday life in the new Länder. The incorporation of the achievements into domestic legislation remained a challenge for the years ahead and the Federal Constitutional Court should continue to play a decisive role in performing that task.

6. Since the third periodic report (CCPR/C/52/Add.3) had been considered, Germany had ratified the Optional Protocol to the Covenant and Protocols Nos. 9, 10 and 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Moreover, the European Court of Human Rights was an effective mechanism for protecting fundamental rights, which perhaps explained why the Optional Protocol to the Covenant had so far only rarely been invoked. In practice, only one communication against Germany had been referred to the Human Rights Committee, and it had, moreover, been declared inadmissible. Generally speaking, there were virtually no gaps in the protection for human rights in Germany, either by the national or European instruments. However, by acceding to the Optional Protocol, the Federal Government had wished to demonstrate its concern to promote and strengthen

universal respect for human rights. She added that the decisions taken by the German courts were always fully in conformity with the provisions of the Covenant.

7. The protection afforded by the current Constitution for fundamental individual rights could hardly be improved. However, the Constitution had been amended where equality between men and women was concerned; in 1994 the relevant provisions nad been supplemented by a provision under which the State would endeavour to ensure equal treatment for men and women and to eliminate existing disadvantages.

8. In reply to the questions in part I (b) of the list of issues, she first of all said that the Second Equal Treatment Act had come into force in 1994. Structures for the systematic advancement of women had been developed in the public service as well as in some areas of the private sector. However, those measures were mandatory only for the federal and Länder authorities, but not for the private sector. There were commissioners for women, whose duties were laid down in the Second Equal Treatment Act, in all Federal ministries and in many other administrative authorities. The Länder Governments had set up central equality offices, and at the local level the number of such offices was increasing. In short, major efforts were being made to enforce the principle of equal treatment, especially in everyday working life. It was too early to evaluate the effectiveness of the Second Equal Treatment Act, but the Federal Government would submit an initial report on the subject to Parliament covering the period 1996-1998.

9. In reply to the questions in paragraph (e), she said that since 1992 the federal and Länder authorities had been resolutely striving to combat the shameful and often terrible outbreaks of xenophobic and racial hatred and violence, drawing on the full arsenal of repressive - and also preventive - measures at their disposal. Since 1992, the number of serious crimes of that kind (homicides, arson attacks and bombings) had gone down considerably. Whereas in 1992 they had accounted for 28 per cent of all crimes of violence, in 1995 they had only accounted for 6.6 per cent. The total number of offences motivated by xenophobia had fallen by 29 per cent in comparison with 1994 (37 per cent in the case of xenophobic violence). Tribute should be paid to the courts, which had effectively tried offences motivated by xenophobia and racism committed against foreigners in Germany. In 1994, some 2,200 individuals had been brought before the courts for offences motivated by right-wing extremism or xenophobia, and in 1995, 1,500 had been convicted. The authorities' primary objective was to put an end to expressions of anti-Semitism and xenophobia and to the denial of the Nazi crimes and genocide committed against the European Jewish community. In addition, right-wing extremist associations had been dissolved. The production and dissemination of revisionist, right-wing extremist or neo-Nazi propaganda - both written and audiovisual - gave rise to criminal prosecution and seizure of the material. The same applied to right-wing extremist propaganda produced abroad but disseminated in Germany. In that sphere, Germany was trying to achieve harmonization of the relevant legal provisions in different countries, at least among those applicable within the European Union. Germany was also combating the growing dissemination of right-wing extremist propaganda over the Internet. Over and above the harmonization of European legislation, the German authorities would like the computer network service providers voluntarily to refuse to disseminate right-wing extremist propaganda.

Moreover, the federal and Länder authorities were conducting large-scale public-awareness campaigns particularly targeted at children and young people. She assured the Committee that the authorities would not relent in their efforts.

10. It was appropriate to emphasize the measures adopted to integrate foreigners who had been living in Germany for a long time. For example, between 1972 and 1995 more than 89,000 foreigners of Turkish origin had obtained German nationality. In addition, the number of naturalizations was increasing from year to year. In 1995 there had been 31,578 naturalized citizens of Turkish origin in Germany. The requirements for acquiring German nationality had been considerably relaxed in 1990 and 1993. It had become possible for foreigners who had been lawfully residing in Germany for a long time to be naturalized without needing to prove they were deeply integrated, for example by demonstrating satisfactory knowledge of the German language. In addition, at the request of the German authorities, Turkish legislation had also been amended in 1995. As a result, it was no longer necessary to perform Turkish military service before renouncing Turkish nationality. Furthermore, loss of Turkish nationality no longer entailed certain drawbacks - such as restrictions on the right to purchase real estate in Turkey. Generally speaking, the German Government hoped that foreigners who had been lawfully living in Germany for a long time and who intended to settle there permanently would complete their integration by becoming German citizens.

11. In reply to the questions in paragraph (i), she said that the compensation and rehabilitation measures for the victims of political persecution by the Social Unity Party (SED) regime could only be symbolic. It was impossible to provide full reparation for the injustices suffered. None the less, she referred to a number of legislative measures designed to right the wrongs committed. At the end of 1995 the specialized divisions of the regional courts of the new Länder and of Berlin had handed down decisions in more than 130,000 such cases. Since 1993, some 670 million marks had been paid out as compensation to former political prisoners. In addition, people whose health had been affected by their conditions of detention received a pension. For 1993-1995 alone, the authorities had thus paid out 84 million marks, in addition to proportional payments by the Länder. Some 65,000 applications for rehabilitation, both administrative and professional, were currently being considered. As a thorough investigation had to be made into each individual situation, it had so far only been possible to resolve a limited number of cases. She concluded by emphasizing the need fully to achieve Germany's internal unity in a spirit of respect for human rights and fundamental freedoms.

12. Mr. WECKERLING (Germany), replying tc the questions in paragraph (d), said that the Unification Treaty provided that any employee of the public service of the former German Democratic Republic who had been incorporated into the civil service of the Federal Republic of Germany after unification could only be dismissed in exceptional circumstances, and solely on serious grounds. That provision concerned above all civil servants guilty of violations of the human rights enshrined in the Covenant or of other acts contrary to the principles of the Universal Declaration of Human Rights, and the employees of the Ministry of State Security of the former German Democratic Republic - or of its Department for National Security - whose former activities made it unreasonable not to dismiss them. However, there

was no systematic exclusion from the civil service. On the contrary, each case was considered individually, on the basis of the actual circumstances. Moreover, the Unification Treaty made provision for the dismissal of civil servants on grounds of "personal unsuitability". The concept of "personal unsuitability" covered a variety of cases, in particular when the person concerned failed to guarantee that he would at all times respect the principle of democracy in conformity with the Basic Law, and the case of officials of the former German Democratic Republic who had been incorporated into the Federal Republic of Germany's civil service, in particular those who had been politically active in the Social Unity Party (SED). The more politically active and closely identified with the regime a person had been, and the more he had supported it by accepting functions, the less the population would be willing to accept him in an administration governed by the principle of the rule of law. He pointed out that the provision of the Unification Treaty to which he had referred (dismissal on grounds of personal unsuitability) had no longer applied since 1 January 1994.

13. Generally speaking, as each case was dealt with individually, the charge that the authorities had dismissed a whole professional group was totally unfounded. The criteria whereby a civil servant could be dismissed for personal unsuitability were determined by the law, and were in conformity with the principles observed by a State subject to the rule of law. Those concerned could appeal against their dismissal to the labour courts and, in the last resort, to the Federal Constitutional Court. A number of cases had been referred to that body, which had handed down several decisions in favour of the complainants. In general, only a tiny percentage of teachers had been dismissed on those grounds. Their total number was 4,200, and they represented only 2 per cent of the 215,000 who had been integrated into the Federal Republic of Germany's civil service.

14. Regarding the compatibility of those dismissals with articles 2 and 26 of the Covenant, he said that, in conformity with the Covenant, every citizen should have the right to have access to public service in his country, without distinction on grounds of race, colour, sex, language, religion and political or other opinion, without unreasonable restriction and on general terms of equality. Article 25 of the Covenant was designed to prevent privileged groups from exercising a monopoly over the civil service. Having said that, States parties were nevertheless free to recruit suitable candidates for the positions concerned. The teachers who had been dismissed in the new Länder were not suitable to practise as teachers as there was no guarantee that they would support a form of government based on the principles of freedom, democracy and respect for human rights, and that they would teach in conformity with those principles.

15. Mr. HABERLAND (Germany), replying to the questions about members of minority groups (part I (f) of the list of issues), said that Germany had adopted a narrow definition of "minority" for the purpose of granting special privileged status as a national minority. The status was granted to the Danish minority because of its historical links with Germany, as well as to the Slovenian minority. Other minority groups such as the Sinti and the Rom did not enjoy such status, although they were entitled to all the rights guaranteed to recognized national minorities.

16. Nor was such status granted to the 2 million-strong Turkish community in Germany. However, its members were entitled to all the rights guaranteed by article 27 of the Covenant, and could develop their culture, profess and practise their own religion and use their own language. Measures had been taken to foster cultural activities, and Turkish lessons were provided in schools. The German authorities did not wish to open special schools for the Turks as that would be contrary to their objective of integrating them into German society. In order to find work it was necessary to speak German and to be able to follow vocational training, and efforts were being made to increase participation by young Turks in vocational training programmes. The results of the measures had been excellent, as the rate of participation was currently 40 per cent. Legislation had been amended to facilitate naturalization, and Turks who obtained German nationality simultaneously obtained the right to vote. The purpose of those efforts was not to persuade the Turks to give up their traditions, quite the contrary: for Germany, integration was desirable, but assimilation was to be avoided.

17. Mr. WECKERLING (Germany) replied to questions on ill-treatment and on complaints against the police (part I (g) and (h) of the list of issues). Protection against physical or mental ill-treatment was guaranteed by German legislation, and had been strengthened by accession to the European Convention on Human Rights and the Covenant. A system of remedies was available to persons who complained of ill-treatment, and all genuine or alleged violations during custody or detention were investigated. Germany was also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had instituted a system of periodic visits to prisons by the Committee for the Prevention of Torture. A delegation from the Committee had visited Germany from 8 to 20 December 1991 and had inspected police detention centres and penal and psychiatric institutions. In its report, which had been published in 1992, that Committee had said that it had found no cases of torture; a delegation had again visited Germany from 14 to 26 April 1996.

18. Regarding complaints against the police, he said that in recent years complaints had indeed been lodged accusing the police of using excessive force when arresting people, in particular foreigners, or of having brutalized foreigners during custody. Amnesty International had published a detailed report on 20 of the 70 cases brought to its attention between January 1992 and March 1995. A parliamentary commission, together with the Ministers of the Interior and senators from the Länder, meeting at a special conference, had examined the charges and replied to Amnesty International. In addition, in one of the Länder, a parliamentary commission of inquiry had been set up. The Federal Government, which was not directly accused, had taken the allegations extremely seriously and ensured that investigations were duly carried out by the prosecution service. No precise statistics on the total number of cases of brutality reported were available, but each time an individual case had been brought before the European Committee against Torture a serious investigation had been initiated.

19. Mrs. FEY (Germany) added, with regard to the ill-treatment of individuals, that it was difficult to obtain overall figures as the responsibility of the Federal State for the administration of places of detention was exclusively legislative. Each Land was responsible for the running of its prison administration. For that reason, it was impossible to

provide a figure reflecting the scale of the phenomenon for the country as a whole. Where the perpetrators of ill-treatment were concerned, in 1991-1992, 13 of the 16 Länder had instituted no disciplinary or criminal proceedings against members of the police or officials of the prison administration. In the three other Länder, proceedings had been instituted with the following results: in two cases the accused had been acquitted, one case had not yet been heard, in another the accused had been given a disciplinary punishment (a fine) and in the last case the accused had been dismissed by the prison administration because he had caused grievous bodily harm.

20. Where penal institutions were concerned, there was no doubt that Germany had experienced a number of difficulties during the period covered by the report, on account of overcrowding, mainly in men's prisons. In the new Länder the buildings inherited from the regime of the former German Democratic Republic were clearly inadequate, and many of them had had to be closed. It was planned to rebuild them. The personnel had required retraining, which had been completed. From the angle of staff training, there was no difference between the new and the former Länder.

21. Mr. WECKERLING (Germany) said that the law on the use of firearms and conditions of custody was uniformly applied; a standing conference of Ministers of the Interior of all the Länder held special coordination meetings. When the report on the second visit by the European Committee for the Prevention of Torture was published, the conference would take note of any shortcomings identified and endeavour to implement tangible and uniform measures to remedy them. Regarding the compensation provided to the victims of the former German Democratic Republic regime convicted on political grounds, 140,000 applications had been made to the special divisions of the regional courts - the divisions responsible for compensation - since they had been established in 1992. They had already dealt with 130,000 cases. Approximately 670 million marks had been paid as compensation, in addition to the integration support services provided for former political prisoners.

22. The professional rehabilitation measures for the victims of the former Social Unity Party (SED) were implemented by the authorities of the new Länder and Berlin. They had so far received approximately 65,000 applications and had only been able to deal with a small number of them, for lack of time and because of the need for a thorough investigation to establish the facts. However, he pointed out that the two acts referred to in paragraph (i) of the list of issues concerning compensation for SED injustices were but a modest attempt to mitigate past injustices. In the political sphere, the German Government planned to improve tangible measures of compensation.

23. Mr. HABERLAND (Germany) said he would address the right of asylum (paras. (k) to (m) of the list of issues). The right of asylum as provided for by the 1949 Constitution was extremely generous because, at the time, it had been intended for all those Germans who owed their survival only to the protection they had found in other countries. The objective had been to grant the benefit of asylum to "all victims of political persecution" with no room for the authorities to exercise their discretion. In the 1990s, the situation had become untenable, and in 1992 the number of asylum-seekers had totalled 438,000, i.e. approximately 80 per cent of the total number of asylum-seekers in the States members of the European Union. At the same time, the percentage of favourable decisions by the administration had been 4.4 per cent, rising to

almost 10 per cent if judicial decisions were included. It had thus been necessary for all the groups in Parliament to reach a compromise, which had first of all entailed an amendment of the Constitution and then the adoption of the Asylum Proceedings Act, which had been promulgated in 1993. Exceptions had been made to article 16, (a) 2 of the Constitution, under which foreigners from third countries classified as safe were no longer entitled to apply for asylum. The countries classified as "safe" included all the countries in the European Union and all those States in which the implementation of the Geneva Convention on the Status of Refugees and the European Convention on Human Rights was ensured. Foreigners concerned by that measure could be sent on to safe third countries. Article 16, (a) 3 empowered the legislator to draw up a list of countries of origin in which it could be assumed that there was no persecution.

24. The new Asylum Proceedings Act authorized the detention of asylum-seekers at airports, a procedure which was referred to in paragraph (k) of the list of issues. If a foreigner landed at an airport from a country of origin classified as safe, and applied for asylum to the border administration, the entire procedure had to be completed before he was allowed into Germany, provided that it was possible to accommodate him on the airport premises. The same applied to asylum-seekers who were unable to produce any identity documents. During the entire procedure, the applicants were not allowed to leave the transit area. If their application was refused, they could apply for temporary legal protection within three days of having been notified of the decision. An appeal was lodged and the administrative court had to take a decision within a fortnight, which accounted for the "19 days" during which asylum-seekers could be detained at the airport. If their application was refused, applicants could be detained for more than 19 days as they became liable to expulsion. In that case they could appeal to the Federal Constitutional Court and had to remain at the airport; they could also be allowed into Germany if the Constitutional Court informed the authorities that there was a strong likelihood of the appeal being successful. Regarding the general conditions of detention at the airport, he said that five major airports possessed reception centres on special premises. Social services were provided by the two main religious communities, Catholic and Protestant; there were 170 places at Frankfurt airport, although only 100 were currently occupied. Leisure facilities were provided and asylum-seekers were able to contact a lawyer chosen from a list given to them. There were plans to set up a legal advice service on airport premises.

25. Regarding the repatriation of war refugees from Bosnia, he said that Germany had given refuge to 300,000 Bosnian refugees, more than any other country in Western Europe. It had been clear from the outset that the protection provided was temporary, and that attempts would be made to ensure their voluntary repatriation once the situation in the former Yugoslavia changed. Clearly, no one would ever be sent back to a place that was not safe. The German Government maintained close contact with the Government of Bosnia and Herzegovina and with the Office of the United Nations High Commissioner for Refugees.

26. Mr. SCHAEFER (Germany) acknowledged that obviously nowhere in the former Yugoslavia could be described as truly "safe". For that reason, the Government of Germany had, in close cooperation with the European Union, UNHCR and the Government of Bosnia and Herzegovina, selected from a list prepared by

UNHCR three zones that could be considered safe: a district located south of Bihac, the district of Sarajevo and a district near Tuzla. Voluntary repatriation programmes would be possible in those three zones, provided that reconstruction measures were taken. Under no circumstances would anyone be repatriated against their will. In some cases, the Länder were authorized to return people to the former Yugoslavia, although they had not yet done so. On the other hand, it was true that approximately 10 people guilty of criminal offences had been informed of decisions to return them. They had three months to appeal and the procedure would take from five to six months. They could also apply for asylum, which also took a long time. Thus, in practice, no one could be repatriated to the former Yugoslavia before the summer of 1997.

27. The CHAIRMAN invited the members of the Committee to make observations and remarks in the light of the delegation's replies to the written questions asked in part I of the list of issues, and to put any other questions they might have orally.

28. Mrs. CHANET noted that the fourth periodic report of Germany (CCPR/C/84/Add.5, English only) was being considered in a different context from the previous report, as it was the first report submitted since the new Länder had joined the Federation. While it was true that they had already been covered by the Covenant, they had been subject to a completely different economic, political and social regime. She did not underestimate the considerable difficulties Germany had had to overcome, and recognized that the approach adopted to address the problems was praiseworthy; she regretted, however, that the fourth periodic report focused, somewhat simplistically, on the difficulties attributable to the merger. The approach overlooked the concerns which had been expressed by the Committee when the previous periodic report had been considered and to which it would have appreciated replies, even if they had highlighted the new features and additional difficulties revealed by the absorption of the new Länder. She was sure that the dialogue with the delegation would enable the Committee to acquire a more accurate understanding of the situation and clearly to distinguish between the heritage of the former system and what was attributable to the incorporation of the new Länder.

29. Her first series of questions concerned non-discrimination. Precise replies had been provided in respect of racial discrimination. However, she detected discriminatory elements in the Basic Law. For example, although the Law had been amended in 1994, it was surprising that article 3, which had already given rise to observations by members of the Committee when the third periodic report had been considered, had not been amended to take into account articles 2 and 26 of the Covenant: discrimination on grounds of social origin and wealth were still not among the different types of discrimination. She also noted that the rights set out in articles 8, 9, 11 and 12 of the Basic Law applied exclusively to "all Germans", whereas other rights, such as the right to life, were recognized "for all". Certain rights were restricted to Germans: the right of assembly, the right to take up residence and the right to choose a profession. Lastly, article 18 of the Basic Law made it possible to deprive people of their fundamental rights, which was extremely rare in a Constitution. She asked in what circumstances such deprivation could occur, whether there had been any such cases recently and whether the courts had taken any decisions thereon.

30. Her last question on non-discrimination concerned article 25 of the Covenant, which had already given rise to observations by the Committee when the third periodic report had been considered: the question at issue was the notion of disloyalty. Figures had been provided on the number of individuals who had been debarred from working in the civil service on grounds of disloyalty in the Länder of Baden-Württemberg and Lower Saxony (see CCPR/C/58/A/GER, p. 12). The system had been challenged by the European Court of Human Rights and by the Federal Constitutional Court. However, it had intensified as a result of the entry into the Federation of new Länder whose civil servants included members of the former Communist Party of the German Democratic Republic. A total of 4,500 teachers had allegedly been dismissed; she asked what proportion of judges had been forced from office. Above all, she asked what criteria were used to decide whether someone could or could not be suspected of disloyalty and what authority took the decision, as cases were decided individually.

31. Her second series of questions concerned allegations of ill-treatment. Approximately 15 cases of police brutality had been described in a report by Amnesty International. That organization disputed the claim that they were isolated cases, on the basis of a 150-page report by the German Ministry of the Interior, entitled "The police and foreigners", which concluded that the instances of police violence, which was directed mainly against foreigners, could not be considered isolated. In addition, Germany's fourth periodic report referred only cursorily to the conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had recommended a number of improvements (CCPR/C/84/Add.5, para. 41). She asked the delegation to describe the improvements Germany intended to make to its legal system to avoid such practices and the proliferation in the number of people held in custody. When the third periodic report had been considered, the Committee had expressed its concern at the length of preventive detention, which occasionally lasted more than a year (CCPR/C/58/A/GER).

32. Mr. EL SHAFEI agreed that the Committee was in an unprecedented position as it was considering the periodic report of a State party which, following its reunification, had extended the scope of its Basic Law to its whole territory, i.e. to its new Länder. The process itself held out the assurance of legal guarantees and better practices for the exercise of the fundamental rights set out in the Covenant, and should therefore be approved.

33. The points of particular interest to him in part I of the list of issues concerned first of all Germany's interpretation of article 26 of the Covenant, which differed from that made by the Committee in its general comment No. 18 (CCPR/C/84/Add.5, para. 191). Under Germany's interpretation, article 26 authorized different treatment on broader grounds than those contemplated by the Committee. He asked what the practical consequences of that interpretation were and to what extent they led to less favourable treatment than that provided for in the Covenant.

34. The report made several references (paras. 68, 78, 80 and 112 in particular) to the fact that in Germany anyone who considered that his fundamental rights had been violated by a public authority could apply for redress by lodging a complaint of unconstitutionality with the Federal Constitutional Court, after having exhausted all other legal remedies. As the

report also indicated that the decisions handed down by the Constitutional Court were considered part of the legislative process he asked whether the Court's opionion or decision constituted redress by the country's highest legal body to complainants, whether they constituted a legal basis for settling a problem of unconstitutionality in domestic law or whether they fulfilled both functions. The emphasis of the report was rather on the legislative nature of the Court's role.

35. Regarding the monitoring and supervision of penal establishments, he asked whether there were any specific measures to prevent torture and cruel, inhuman or degrading treatment and what was being done to ensure impartial monitoring of penal institutions. He asked whether persons who had been arrested or detained were informed of the guarantees to which detainees were entitled under the prison regulations and whether they were able to ensure they were observed. Thirdly, he asked whether convicted prisoners were separated from other detainees and what the different categories of convicts were; he also requested information on incommunicado detention, maximum security sections and contacts between convicts and the outside world (their family, lawyer and non-governmental organizations). He inquired what improvements were planned as a result of the report submitted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (see fourth periodic report, para. 41).

36. The delegation had provided valuable information on the methods used to combat xenophobic violence, at the federal level and in the Länder, whether police measures or ordinary legal measures, on efforts to integrate foreigners and on other measures. In the Committee's view, the provisions designed to combat xenophobia raised a number of issues under articles 20, 21, 22 and 19, and even under article 14. First of all, the measures contemplated by the new Crime Prevention Act of 1994 included more frequent use of the summary procedure in simple cases, in order more rapidly to try and to punish. He asked under what circumstances the summary procedure applied and whether it was possible to appeal against sentences handed down in such cases. Secondly, he inquired whether cases involving freedom of expression and freedom of assembly or association had been referred to the courts as a result of the implementation of the new Crime Prevention Act. He asked what the outcome of such procedures had been and how the courts weighed the interests and protection of society against acts of violence whose perpetrators could always invoke their constitutional rights.

37. Mrs. EVATT said that Germany's fourth periodic report (CCPR/C/84/Add.5, English only) was a good report which contained a wealth of detail. She commended the ratification by the State party of the first and second Optional Protocols.

38. She was gratified by the adoption of the 1994 bill on equal treatment and measures to combat sexual harassment at work (CCPR/C/84/Add.5, para. 32). However, she regretted that the problem of reunification had not been addressed in terms of its consequences for the women of the Länder in the eastern part of Germany, as she would have appreciated fuller information on employment and unemployment among them, their conditions of employment, access to child-care structures and to medical abortion, etc. She also asked to what extent the new measures referred to in the report had helped to improve the situation of women in the new Länder.

39. None the less, the provisions of article 3, paragraph 2, of the Basic Law were welcome as they made it mandatory for the State to adopt measures to ensure equal treatment for men and women and to eliminate discriminatory practices (CCPR/C/84/Add.5, para. 32). Regarding the remarks on the status of children and equality for children born out of wedlock in paragraph 190 of the fourth periodic report, she asked whether the plans to standardize legislation throughout Germany had been put into effect.

40. She was disturbed by the apparent distinction made by the State party in application of article 27 of the Covenant, between national and other minorities, i.e. immigrants. Information had been provided on the Turkish minority, which seemed to be the largest, but she would also appreciate further details on the Italian, Yugoslav and Gypsy minorities, which were also entitled to the protection afforded by article 27. She was particularly concerned about children's access to education, and especially to teaching in their own language and by the measures to enable the minorities to develop their own culture, and asked whether the Gypsies had German nationality.

41. The delegation had described improvements to the acquisition of nationality by naturalization. She asked how many years' residence were required before people could apply for German nationality, whether a child whose parents were lawfully resident in Germany was automatically entitled to German citizenship, and, lastly, what differences there were between foreigners and Germans for the exercise of the rights set out in the Covenant.

42. Regarding articles 12 and 13 of the Covenant and the situation of refugees and asylum-seekers, the delegation had referred to recent changes in Germany, concerning, above all, Bosnian refugees. However, she understood that those changes also concerned other groups of refugees, for example those from Viet Nam and Mozambique: she asked how they affected the situation of such refugees.

43. The members of the Committee had received information about serious incidents connected with the expulsion from Germany of foreigners, one of whom had even died during the attempt to expel him. As proceedings had been instituted in connection with the incident, she asked what their results had been and, more especially, what specific measures had been taken to avert the repetition of such incidents.

44. She also asked whether the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had been put into practice. She also inquired whether a person who had just been arrested was informed not only of the charges against him but of his rights, in a language he understood.

45. Lord COLVILLE raised an issue already referred to by Mrs. Chanet and Mr. El Shafei, concerning ill-treatment by and complaints against the police. He noted with satisfaction that a unified system of training, supervision and discipline was being instituted as part of a joint effort by the Länder and the Federal Government. However, he asked what happened when a person was ill-treated at the time of his arrest or during the first hours of custody on police premises, as the delegation had stated that complaints in that connection were extremely rare.

46. Since the Penal Code covered the offence of bodily harm by police officers, it could be assumed that there was a procedure for lodging complaints and for the examination of such complaints, and that the procedure also stipulated how complaints should be followed up in order for the victims to obtain redress. He understood that the Public Prosecutor investigated such complaints: he asked whether the Public Prosecutor was assisted by the police, and if so, whether complainants might not be reluctant to give full details in their complaint. He asked who conducted the interrogation if, in the course of the investigation it was necessary to question a police officer implicated by the complaint. If it was another member of the police, there was little likelihood of the procedure being unfavourable to the officer implicated. Experiments had been conducted in a number of countries to overcome those drawbacks: they involved associating a completely independent person in the investigation, who was present during questioning and who could thus ensure that the procedure was equitable. He asked whether Germany had instituted such a system, as it could account for the very small number of complaints lodged against the police.

47. The German delegation had stated that no complaint concerning ill-treatment by the police in Germany had been set before the European Court of Human Rights in Strasbourg, in his view, that could be explained by the fact that, before they could refer a case to the European Court, complainants had to exhaust all domestic remedies. However, in Germany as in many European countries, persons who believed that they had been the victims of ill-treatment, and who had failed to obtain redress through the appropriate channels, could always take legal proceedings in the civil courts and, where Germany was concerned, he was aware of cases in which the victims had been compensated, which was perhaps why they had not needed to refer the case to the European Court of Human Rights. However, he asked the German delegation for confirmation.

48. Mr. PRADO VALLEJO welcomed the constructive dialogue between the Committee and the representatives of the German Government, and by its unfaltering cooperation with the Committee, even prior to Germany's reunification. He also thanked the delegation for having provided further clarifications to the detailed information already provided in the fourth periodic report (CCPR/C/84/Add.5, English only).

49. Regarding the application of article 12 of the Covenant, and more precisely freedom of movement for asylum-seekers, he asked for details of the additional conditions that could be imposed for the issue of the provisional residence permits, referred to in paragraph 61 of the report: he asked what the conditions were and how they were applied. Moreover, regarding the allegations of ill-treatment by the police - which had been referred to in reports by Amnesty International and by various other non-governmental organizations - he asked how the victims of such ill-treatment in the former German Democratic Republic had been compensated.

50. He noted the statement in paragraph 244 of the report that in Germany the rights of ethnic and linguistic minorities were protected only if they lived in a particular region. He wondered what was the fate of members of those minorities who did not live in the particular region, and whether they might be deprived of their rights. Lastly, the German authorities had frankly admitted that there was a wave of xenophobia in Germany; that was not peculiar

to Germany but existed, unfortunately, in many European and other countries. He commended the effective measures adopted by the German authorities to combat the phenomenon and to punish those responsible. However, he drew attention to the statement in paragraph 204 of the report that the public authorities could not be deemed guilty of violations of human rights if the activities of right-wing extremists led to violence. He asked for clarification of that point, since in his view there could be no circumstances in which State authorities were not held responsible for their acts.

51. Mr. ANDO thanked the German delegation for its written and oral replies to the questions put by the members of the Committee. He requested clarification of several points, all of which were connected with the changes that had taken place as a result of the reunification of Germany. First of all, he asked whether and how the international agreements entered into by the former German Democratic Republic with other countries, especially with regard to citizenship, naturalization, right of asylum, marriage and adoption, and where appropriate, cooperation between the police and justice departments, had been incorporated into the Federal Republic of Germany's current judicial system. He had also taken note of the detailed information provided in paragraphs 15-25 of the report on the harmonization of the system of judicial administration between the former and the new Länder; he asked for information on the training of judges, prosecutors and lawyers in the new Länder and whether, if not enough of them had yet received the necessary training, they were not overwhelmed by their task. In addition, the grounds on which judges and civil servants could be dismissed, as set out in paragraph 170 of the report, were susceptible of an extremely broad interpretation, and he asked for details of any cases in which they had led to abuses. Lastly, he requested further details of how the Penal Rehabilitation Act, whose provisions were described in paragraphs 49-53 of the report, was applied in practice.

52. Mr. KRETZMER thanked the German delegation for the detailed replies it had already given to most of the questions. He wished to take up the question raised by Lord Colville of the procedure used to follow up alleged ill-treatment by members of the police. In addition to the criminal investigations to which such allegations might lead, it should also be possible to institute disciplinary proceedings for acts that constituted dereliction of duty. However, the information provided, in particular by Amnesty International and by other non-governmental organizations, drew attention to serious shortcomings in the disciplinary procedure, and in particular to the lack of impartiality and the impossibility for complainants or their lawyers to obtain the files. For that reason, he requested further information on the procedure followed in Germany in investigating breaches of discipline by police officers.

53. One question which had already been asked when Germany's previous periodic reports had been considered concerned the distinction made in practice between Germans and persons lawfully residing on German territory for the exercise of the rights set out in the Basic Law; certain fundamental rights such as freedom of association, assembly and movement, etc., were restricted to Germans alone. He asked for clarification of that point.

54. Mrs. MEDINA QUIROGA said that Germany deserved full credit from the international community for the seriousness with which the German authorities

had made the efforts required to achieve integration following reunification and for their determination to discharge their obligations under the international human rights instruments. However, it was precisely the measures of integration that could give rise to some concern. She noted in particular that some civil servants of the former German Democratic Republic, for example in the teaching profession or in the administration of justice, had been dismissed on the grounds that they lacked the necessary skills to assume particular responsibilities. She asked what became of them, how they made a livelihood, how they were integrated into society and how the authorities ensured that the positive features of society in the former German Democratic Republic enriched the new unified German society.

55. Regarding equality between men and women, she wondered about the legislative provisions referred to in paragraph 32 of the report, whose purpose was to advance the interests of women in the federal administration, in particular to enable them to reconcile their jobs with family responsibilities. There was nothing to suggest the existence of similar measures to permit men to reconcile their jobs with their family responsibilities. Lastly, she asked what were the rights of under-age women, for example with regard to marriage, and what was the situation of single mothers who were minors.

56. Mr. LALLAH said that, while he was gratified by the entry into force for Germany of the Optional Protocol, he regretted that a reservation had been made regarding reference to the Protocol to ensure the implementation of article 26 of the Covenant. He saw no practical difficulty that might prevent a State party from fully implementing article 26, which covered all those fields in which the State could decide to intervene in the legislative, executive or judicial areas in order to guarantee equal protection against discrimination for all. Moreover, he asked whether the German authorities had come up against any problems because of the reservations made to certain articles of the Covenant by the former West Germany and which had not been made by the former German Democratic Republic. Regarding article 27 of the Covenant, he asked what practical distinction was made between Germans on the one hand and the national minorities and other ethnic, religious or linguistic minorities on the other and what the actual consequences of any such distinction were. Lastly, he fully shared Mrs. Medina Quiroga's concerns about the situation of ex-civil servants of the former German Democratic Republic who were henceforth considered unsuitable to work in the German civil service. He understood that people might have had divergent outlooks in the past, but no society worthy of the name could deprive a person of his fundamental right to a decent life and to respect for his human dignity.

The meeting rose at 12.55 p.m.